

REMARKS

Claims 1-12 are pending and at issue.

Applicant respectfully traverses the rejections of claims 1, 5 and 6 as anticipated by Kingman 2,386,900; claim 2 as unpatentable over Kingman; and claims 3, 4, 7 and 8 as unpatentable over Kingman in view of Hayes 2,553,254. Claim 1 has been amended to overcome the rejections by characterizing the sanding block as comprising an abrasive grit bonded to a flexible, compressible, polymeric foam core which is neither taught nor suggested by either Kingman or Hayes. Accordingly, the rejections of the claims should be withdrawn and the claims allowed.

Additionally, even without the above amendment distinguishing Hayes and Kingman, the rejection of claims 3, 4, 7 and 8 as unpatentable over Kingman in view of Hayes is improper because the rejection fails to establish a *prima facie* case of obviousness as required under 37 C.F.R. 2142, 2143 et. seq. More specifically, the rejection fails to state any rationale or cite any evidence whatsoever for its proposed modification of Kingman with Hayes. Absent such a rationale, the rejection fails to meet the standards set forth in the M.P.E.P. for stating a *prima facie* case of obviousness and accordingly, is improper and should be withdrawn.

Reconsideration of the withdrawal of claims 9-12 first set forth in the Office Action dated August 4, 2005, the Appeal of which resulted in the present Office Action is also respectfully requested. The withdrawal of claims 9-12 is improper because they read on the elected species. In this regard, a Restriction Requirement was stated in an Office

Action dated April 15, 2004 requiring that an election be made between "species I, where the block has similar abrasive adhered to the expansive and adjacent sides; species II, where the block has different abrasive adhered to the expansive sides from that of the adjacent sides." A response to the restriction requirement was filed on April 29, 2004 wherein Applicant elected Species I and submitted that all claims read on the elected species. In the next Office Action, dated July 20, 2004, the Examiner acknowledged the election of Species I and expressly stated that "The Examiner agrees that all pending claims read on the elected species, and have been examined on the merits." After Applicant's response to the July 20th Office Action, the final Office Action dated August 4, 2005 was issued, with the withdrawal of claims 9-12 stated for the first time.

The withdrawal of claims 9-12 is improper for at least two reasons. First, the withdrawal references a response made in the parent case of the present application. This is improper, if for no other reason than the fact that claims 9-12 in the parent case are different than claims 9-12 in the present application, and accordingly, the October 2, 2003 response filed in the parent application has nothing to do with claims 9-12 in the present application. Second, claims 9-12 of the present application (rather than the parent application) do in fact read on the elected species, which fact was expressly acknowledged by the Examiner in the Office Action dated July 20, 2004.

It should be noted that because the withdrawal of claims 9-12 was improper, any subsequent Office Action rejecting claims 9-12 on the art should not be final.

In view of the foregoing, Applicant respectfully requests reconsideration of the rejections, consideration of claims 9-12 and allowance of the case.

Respectfully submitted,

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